UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0481

September Term, 2015

KAREEM EUGENE HUNT

v.

STATE OF MARYLAND

Wright,
Graeff,
Moylan, Charles E., Jr.
(Retired, Specially Assigned),

JJ.

Opinion by Moylan, J.

Filed: January 15, 2016

The appellant, Kareem Eugene Hunt, was originally convicted in November of 2009 in the Circuit Court for Howard County in a jury trial, presided over by Judge Timothy J. McCrone, of two counts of armed robbery, seven counts of attempted armed robbery, two counts of conspiracy to commit armed robbery, seven counts of first-degree assault, the use of a handgun in the commission of a crime of violence, the unlawful possession of a firearm, and the possession of a short-barreled shotgun. On January 5, 2010, he was sentenced to an aggregate of 50 years of incarceration. Included was a mandatory term of 25 years of incarceration without the possibility of parole pursuant to Criminal Law Article, §14-101(c). At the sentencing, the appellant raised no objection to the fact that he was being sentenced to an enhanced sentence as a three-time offender for a crime of violence.

The appellant appealed his convictions to this Court. He raised a single contention involving identification law. On March 30, 2011, this Court filed an unpublished opinion affirming the appellant's convictions. Hunt v. State, No. 2625, September Term, 2009 (filed March 30, 2011). In that appeal, no question was raised with respect to the enhanced sentence.

On January 23, 2015, five years after the initial sentencing, the appellant filed a Motion to Correct an Illegal Sentence pursuant to Maryland Rule of Procedure, Rule 4-345(a). He argued that the State had failed to show that he was eligible for the enhanced, non-parolable sentence. Had such been the case, it would, to be sure, have been cognizable under Rule 4-345(a). Williams v. State, 220 Md. App. 27, 43, 102 A.3d 814 (2014); Nelson v. State, 187 Md. App. 1, 11, 975 A.2d 298 (2009); Veney v. State, 130 Md. App. 135, 145,

744 A.2d 1094 (2000). Such, however, was not the case. After a hearing before Judge McCrone, who had presided over the original criminal case, Judge McCrone denied the appellant's motion on May 4, 2015. This appeal followed.

At the time of the original sentencing, January 5, 2010, the enhanced sentence was imposed pursuant to Criminal Law Article, §14-101(d)(1)(i). Without substantive change, that section has now been renumbered as §14-101(c)(1)(i). In this opinion, we will use the current numbering of the statute. That section now provides:

> "(c) Third conviction of crime of violence. – (1) Except as provided in subsection (f) of this section, on conviction for a third time of a crime of violence, a person shall be sentenced to imprisonment for the term allowed by law but not less than 25 years, if the person:
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> (i) has been convicted of a crime of violence on two prior separate occasions:
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> 1. in which the second or succeeding crime is committed after there has been a charging document filed for the preceding occasion; and
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> 2. for which the convictions do not arise from a single incident; and
>
> (ii) has served at least one term of confinement in a correctional facility as a result of a conviction of a crime of violence.
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> (2) The court may not suspend all or part of the mandatory 25-year sentence required under this subsection.
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> (3) A person sentenced under this subsection is not eligible for parole except in accordance with the provisions of §4-305 of the Correctional Services Article."

(Emphasis supplied).

In this case, the two ostensibly qualifying convictions for the enhanced sentence were from the State of New York. The first was a conviction on October 1, 1995 for robbery in the third degree. The second was a conviction on June 17, 1996 for robbery in the second

degree. The appellant does not dispute the fact of these two New York convictions. He further agrees that his New York conviction for second-degree robbery qualifies as a "crime of violence" under both New York and Maryland law. He challenges, however, the use of the New York conviction for third-degree robbery as a basis for sentence enhancement, claiming that it should not qualify as a "crime of violence" for purposes of sentence enhancement in Maryland.

Sentence Enhancement in Maryland May Rely Upon Foreign Convictions

The law is now well-settled that sentence enhancement in Maryland may rely upon convictions from foreign jurisdictions. In Butler v. State, 46 Md. App. 417, 323, 416 A.2d 773 (1980), Judge Couch wrote for this Court:

> "So far as the appellant's argument is concerned that this conviction, being a foreign conviction, cannot be used, we see no merit. The intent of the Legislature in providing enhanced punishment for a subsequent violent offender seems clear to us and should not be thwarted by restricting the predicates to only Maryland convictions."

(Emphasis supplied). In that case, the question was whether a robbery conviction in the District of Columbia qualified as a "crime of violence" in Maryland.

In Temoney v. State, 290 Md. 251, 429 A.2d 1018 (1981), the Court of Appeals did not question on jurisdictional grounds the use of two convictions from the District of Columbia to be examined for possible sentence enhancement in Maryland. It ultimately ruled, however, that robbery in the District of Columbia is not necessarily a "crime of violence" within the contemplation of Maryland law.

In Muir v. State, 308 Md. 208, 517 A.2d 1105 (1986), the defendant challenged the use of military court-martial convictions for purposes of sentence enhancement in Maryland.

> "Muir argues that his court-martial convictions for crimes of violence may not be deemed qualifying predicate offenses under §643B because of substantial procedural and substantive differences between the civil and military justice systems. The latter, he argues, is primarily an instrument of military discipline and not of justice."

308 Md. at 213 (emphasis supplied). Chief Judge Robert Murphy's opinion for the Court of Appeals, 308 Md. at 218, squarely placed the Court's imprimatur on the use of the out-of-state convictions for sentence enhancement purposes.

> "As earlier observed, ample evidence was offered to prove that Muir was convicted in 1969 by a general court-martial of offenses which, if committed in Maryland, would be classified as 'crimes of violence' under §634B(a). Accordingly, these convictions may be counted as predicate felonies for the purpose of enhancing Muir's punishment for his later criminal acts."

(Emphasis supplied).

In Bowman v. State, 314 Md. 725, 730, 552 A.2d 1303 (1988), the defendant did not challenge the use of an out-of-state conviction for purpose of sentence enhancement. His challenge went only to the question of whether the convictions qualified as a "crime of violence" in Maryland.

> "Bowman now concedes that the District of Columbia conviction in 1974 serves as a predicate crime for the imposition of a mandatory sentence under Art. 27, §634B. But he contends that the conviction of robbery in 1980 does not supply the necessary second predicate conviction."

(Emphasis supplied). See also, Hall v. State, 69 Md. App. 37, 57-63, 516 A.2d 2014 (1986).

What Is A "Crime of Violence"?

The sentence-enhancement statute itself defines a "crime of violence." Twenty-four statutory crimes are listed by §14-101(a). As we are looking for a Maryland analogue for New York's robbery in the third degree, at least three of the 24 may be of possible service.

> "(a) 'Crime of Violence' defined: In this section, 'crime of violence' means:
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> ...
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> (9) robbery under §3-402 or §3-403 of this article;
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> ...
>
> (17) an attempt to commit any of the crimes described in items (1) through (16) of this subsection;
>
> ...
>
> (22) assault with attempt to rob[.]"

The Conviction is New York's; The Characterization of the Conviction is Maryland's

The appellant's flagship contention is that the October 1, 1995 conviction for third-degree robbery in New York does not qualify as a "crime of violence" for purposes of enhancing the appellant's January 5, 2010 sentence in Maryland. The appellant's argument rests on the predicate that New York does not characterize its offense of third-degree robbery as a crime of violence and that, as a matter of interstate comity, Maryland should defer to New York's characterization of a New York offense. The appellant argues:

> "In New York, there are three degrees of robbery: (1) robbery in the third degree, a class D felony, N.Y. Penal Law §160.05 (McKinney, 2015); (2) robbery in the second degree, a class C felony, *id.* §160.10; and (3)

> robbery in the first degree, a class B felony, *id.* §160.15. However, only the latter two offenses are considered to be crimes of violence under New York law; specifically, robbery in the first degree is a Class B violent felony offense and robbery in the second degree is a Class C violent felony offense. N.Y. Penal Law §70.02(a) & (b). Notably, New York does not include third degree robbery within the violent offenses enumerated §70.02. The New York offense of robbery in the third degree, therefore, is not a violent offense under New York Law."

(Emphasis supplied).

Maryland, however, is not so deferential. As Judge Getty explained for this Court in Mitchell v. State, 56 Md. App. 162, 183-84, 467 A.2d 522 (1983):

> "The language used by the Legislature in enacting Article 27, Section 643B, shows an intent to limit the application of the law to crimes actually involving force or violence. Whether a criminal act constitutes a "crime of violence" must be measured against the Maryland statute, and it matters not whether the particular crime may be a violent act in the foreign state. Cutting cacti in California, uprooting the state flower (rhododendron) in West Virginia, or desecrating a confederate cemetery in Mississippi may be felonies punishable by imprisonment in those states. We, however, would not consider such acts as proper bases for mandatory sentencing – no matter how they are viewed by the several jurisdictions.
>
> "We suggest, that in every case in which the state intends to rely upon a foreign conviction of a crime for mandatory sentencing purposes, the state first determine that the crime committed elsewhere qualifies as a crime of violence under our statute."

(Emphasis supplied).

In Hubbard v. State, 76 Md. App. 228, 242, 544 A.2d 346, cert. denied, 313 Md. 688 (1988), Judge Blum made it pellucidly clear that Maryland will determine for itself, using

Maryland standards, whether a foreign conviction will qualify as a crime of violence in order to enhance a sentence in Maryland.

> "Appellant also argues that although in Maryland attempted robbery is a crime of violence, in California 'attempted robbery' is not necessarily an offense that would be deemed a crime of violence under Maryland law and, therefore, it cannot be used as a predicate offense for the purposes of §643B.
>
> ...
>
> "We do not hesitate to conclude that the California crime of 'attempted robbery' qualifies as an offense recognizable as a crime of violence under Maryland law."

(Emphasis supplied).

We will defer to New York for the legal validity of the 1995 conviction in New York. We will, however, characterize in our own fashion and do with it what we will.

What is Robbery?

The second prong of the appellant's contention is that a third-degree robbery under New York law would not qualify as a crime of violence in Maryland even by Maryland standards.

The starting point for our analysis is that robbery in Maryland always has been and essentially remains common law robbery. The hard core around which all else revolves is the common law felony of robbery. Robbery is a compound crime, being both a crime against property and a crime against persons. It is a larceny from the person by force or

threat of force. It is the threat to the person that makes robbery a crime of violence. Judge Greene described it in Smith v. State, 412 Md. 150, 156 n. 1, 985 A.2d 1204 (2009):

> "Robbery is a common law crime in Maryland and is defined as 'the felonious taking and carrying away of the personal property of another, from his person or in his presence, by violence, or by putting him in fear.'"

(Emphasis supplied).

Judge Orth also characterized the ancient felony of robbery in Darby v. State, 3 Md. App. 407, 413, 239 A.2d 584 (1968):

> "Robbery is a crime in Maryland under the common law. It is not defined by statute but the penalty is fixed by statute. ... It thus retains its common law definition – 'the felonious taking and carrying away of the property of another, from his person or in his presence, by violence, or by putting him in fear."

(Emphasis supplied; citations and footnote omitted).

Robbery is now a statutory crime in Maryland. Maryland Code, Criminal Law Article, §3-402 provides:

> "(a) A person may not commit or attempt to commit robbery.
> "(b) A person who violates this section is guilty of a felony and on conviction is subject to imprisonment not exceeding 15 years."

Section 3-402 covers robbery with a deadly weapon.

In Williams v. State, 220 Md. App. 27, 32-33, 102 A.3d 814 (2014), Judge Kenney described robbery's transition, without any substantive change, from a common law crime with a statutory penalty to a statutory offense per se.

> "Prior to 2000, robbery was a common law offense with a statutory penalty. See Md. Code (1957, 1996 Repl. Vol.) §§486, 488 of Article 27

> (setting the maximum penalties for the crimes of robbery and robbery with a deadly weapon, but not defining those offenses). The General Assembly codified the crimes of robbery and armed robbery as Art. 27, §486 and Art. 27 §487, respectively, effective October 1, 2000. When the Criminal Law Article was subsequently adopted on October 1, 2002, the statutes proscribing robbery and armed robbery were recodified as [Criminal Law Article] §3-402 and [Criminal Law Article] §3-403, 'without any substantive change' from Art. 27 §486 and Art. 27 §487."

(Emphasis supplied; footnote omitted).

The Williams opinion, 220 Md. App. at 33 n. 2, also made it clear that robbery still retains its common law definition.

> "As codified, 'robbery' retains its common law definition, 'the felonious taking and carrying away of the personal property of another, from his person or in his presence, by violence, or by putting him in fear.'"

(Emphasis supplied).

Robbery's status as a crime of violence, moreover, has never been in doubt.

> "For as long as there has been an enhanced penalty statute in Maryland, robbery and armed robbery have been included in the enumerated list of violent crimes that form the basis for the imposition of a more severe sanction against repeat violent offenders. [Criminal Law Article] §14-101; Art. 27 §643B."

Williams, 220 Md. App. at 33 (emphasis supplied); cf. Jones v. State, 420 Md. 437, 456-57, 459, 23 A.2d 880 (2011); McCloud v. Handgun Permit Review Board, 426 Md. 473, 485-87, 44 A.2d 993 (2012).

Third-Degree Robbery in New York

In looking at the elements of the pertinent New York crime and then determining its Maryland analogue, Hall v. State, 69 Md. App. 37, 61-62, 516 A.2d 204 (1986), cert. denied, 308 Md. 382 (1987) and Watson v. State, 68 Md. App. 168, 173-74, 510 A.2d 1094 (1986), describe "a two step process." The first step is to determine if "the Maryland counterpart to the foreign crime" is one of those offenses classified in Maryland as a crime of violence. In this case, that first step is clear. Robbery in Maryland indisputably qualifies.

The second step is described by Hall v. State, 69 Md. App. at 61-62, quoting from Watson v. State, 68 Md. App. at 174.

> "Once it is determined that the counterpart Maryland offense is among those set out in the statute, we then look to the law of the foreign jurisdiction for its definition of that crime. If the elements of the crime as established by the foreign jurisdiction are sufficiently limited to those elements by which the crime is established in this State, it qualifies as a violent crime under our statute. Temoney v. State, 290 Md. 251, 262-64, [429 A.2d 1018] (1981)."

(Emphasis supplied). We now look to New York.

Section 160.05 of the New York Penal Laws (McKinney, 2015) defines third-degree robbery.

> "A person is guilty of robbery in the third degree when he forcibly steals property. Robbery in the third degree is a class D felony."

(Emphasis supplied).

For present purposes, the critical words are "forcibly steals." Section 160.00 of the New York Penal Laws covers all three degrees of robbery in New York and provides a blanket definition of "forcible stealing."

> "Robbery is forcible stealing. A person forcibly steals property and commits robbery when, in the course of committing a larceny, he uses or threatens the immediate use of physical force upon another person for the purpose of:
>
> "1. Preventing or overcoming resistance to the taking of the property or to the retention thereof immediately after the taking; or
>
> "2. Compelling the owner of such property or another person to deliver up the property or to engage in other conduct which aids in the commission of the larceny."

(Emphasis supplied).

That "forcible stealing" is common law robbery in Maryland to a fare-thee-well. It is also a crime of violence in Maryland to a fare-the-well. New York, as is its prerogative, has chosen only to ratchet its robberies up to the violent crime plateau when, in addition to the classic elements of robbery, there is an aggravating factor present, such as, for example, the use of a gun, the presence of an accomplice, or the actual infliction of injury to the victim. Maryland, by contrast, is not so reticent. Common law robbery is larceny from the person by force or threat of force. No additional aggravating factor is required. Robbery in Maryland is what it always has been since March 25, 1634, when it, along with the rest of English common law, arrived as part of the unseen cargo of the Ark and the Dove. See, Spencer v. State, 422 Md. 422, 434, 30 A.2d 891 (2011) ("Common law robbery has a long

history of requiring the State to prove either the use of force or the threat of force in order to distinguish robbery from the lesser offense of larceny or theft."); Coles v. State, 374 Md. 114, 123, 821 A.2d 389 (2003) ("The hallmark of robbery, which distinguishes it from theft, is the presence of force or threat of force."); Morris v. State, 192 Md. App. 1, 33, 993 A.2d 716 (2010) (Robbery is "a larceny from the person accomplished by either an assault (putting in fear) or a battery (violence).").

Phantom Distinctions That Do Not Exist

The appellant finally engages in a tortured effort to find New York appellate decisions that seem to uphold third-degree robbery convictions on facts that do not establish the use of force or threat of force. He seeks to show that third-degree robbery in New York is broader than robbery in Maryland, notwithstanding the fact that the respective definitions are essentially verbatim. We find the effort completely unconvincing, as we fail to draw the distinctions which the appellant labors to draw. In People v. Ross, 180 A.D.2d 698, 579 N.Y.S.2d 713, (N.Y. App. Div. 1992), the Appellate Division stated that the victim's testimony about the pain she experienced when the defendant grabbed her purse from her hand was sufficient evidence for the jury to have "rationally concluded that the defendant employed physical force to overcome the victim's resistance to the taking of her property."

Purse-snatching has always been the law professor's illustrative borderland between mere larceny and robbery. If the purse can be lifted gently and deftly from the victim's person without resistance (and sometimes without even awareness), then a mere larceny has

occurred. If, on the other hand, the victim resists and some force is exerted to overcome that resistance, the mere larceny is escalated to a larceny from the person by force, to wit, it beomes robbery. The purse-snatching in People v. Ross, would unquestionably have been robbery in Maryland as well as in New York.

We similarly find that People v. Rivera, 160 A.D.2d 419, 554, N.Y.S.2d 115, (N.Y. App. Div. 1990), fails to stand for the proposition for which the appellant cites it. The Appellate Division held that the evidence was sufficient to show a forcible taking because the defendant "forcibly and repeatedly yanked the four chains [around the victim's neck] until they were ripped from her neck, exerting sufficient force to break their safety clasps, and hit her in the chest in the process." Id. at 419. The court thus was "not persuaded that defendant engaged in an nonphysical, unobtrusive, snatching." The appellant's citation of the case only convinces us that this Court and the New York Appellate Division are reading from the same page.

The appellant finally cites People v. Santiago, 62 A.D.2d 572, 405 N.Y.S.2d 752, (N.Y. App. Div. 1978), aff'd, 402 N.E.2d 121 (N.Y. 1980), for an ostensible difference between Maryland and New York with respect to the use of force as an element of robbery. The appellant contends that third-degree robbery in New York does not require the use or threat of force. In Santiago, the defendant grabbed the victim's purse from the window of a moving train. The Appellate Division held that "there was sufficient evidence to support a jury finding that the victim resisted by clinging to her purse and that the overcoming of this

resistance, through the use of the overwhelming momentum of the train, constituted a robbery by an definition of that term." Id. at 579. In these three cases cited by the appellant there is not a sliver of difference between third-degree robbery in New York and robbery in Maryland.

Purse-Snatching as a Modality of Robbery

The appellant goes further and cites as controlling Maryland law some language, out of context, which we deem to be affirmatively misleading. The appellant avers:

> "In Maryland, however, 'the mere snatching or sudden taking away of the property from the person of another does not constitute sufficient force, violence, or putting in fear to support a robbery conviction.' Bowman [v. State], 314 Md. [725] at 729 [(1989)]."

The appellant seems to be saying that purse-snatchings, or sudden snatchings of property generally, albeit recognized as third-degree robbery in New York, would not constitute robbery in Maryland. That, however, is not the law of Maryland and Bowman v. State does not say that it is. For starters, the use of the statement glides over the significance of the adverb "mere" in the phrase "mere snatching" and ignores Bowman's actual distinction between "mere" snatchings and other snatchings that do involve sufficient force to overcome resistance. Bowman is not a blanket rejection of purse-snatchings generally as instances of robbery.

In looking beyond Bowman's dicta to its actual holding, the holding is that a robbery conviction in the District of Columbia is not necessarily a "crime of violence" for sentence

enhancing purposes in Maryland. That is so because §22-2901 of the District of Columbia Code (1981) defines robbery more broadly than does either Maryland or the New York third-degree robbery provisions. The D.C. definition, unlike the Maryland and New York definitions, goes on to include the third modality "or by sudden or stealthy seizure or snatching." The Bowman opinion points out, 315 Md. at 730-31, that this inclusion of a "stealthy seizure" implicates a modality that in Maryland would constitute only larceny and not robbery.

> "We noted in Temoney at 263, 429 A.2d 1018 that '[t]he terms of this section have been interpreted to include acts, such as pickpocketing for example, which involve stealth but not violence or putting in fear' (citations omitted). We observed, as recently confirmed in West, that '[i]n Maryland, on the other hand, mere pickpocketing would be larceny (not a '[c]rime of violence') as enumerated by Code, Art. 27, §643B, rather than robbery.'"

(Emphasis supplied).

That is the context for any language in Bowman. Because of its reliance on stealthy takings that are not necessarily forcible takings, the D.C. robbery law is broader than Maryland's, whereas New York's third-degree robbery law is not.

The words that the appellant quotes from Bowman, moreover, are themselves a direct quotation from West v. State, 312 Md. 197, 206, 539 A.2d 231 (1988). The West case involved the question of whether the purse-snatching in that case did or did not constitute a robbery. The victim in West described the purse-snatch:

> "Then I walked down Park Heights Avenue and I was going across Park Heights Avenue where the elementary school is there where the incident

> happened. As we were walking across the field a man just snatched my purse from my hand and he ran, that's when I noticed my pocketbook was gone when he ran."

312 Md. at 199 (emphasis supplied). That was a paradigmatic "mere snatching" that did not involve any resistance on the part of the victim nor any force necessary to overcome resistance.

Chief Judge Robert Murphy's opinion for the Court of Appeals in West was meticulously careful to distinguish between those purse-snatchings that constitute robbery and those mere purse-snatchings that do not. The classic illustration of a mere snatching that does not involve force is Cooper v. State, 9 Md. App. 478, 265 A.2d 569 (1970). In Cooper, no force was used other than that needed to seize the property itself. The Court of Appeals, in West, 312 Md. at 205, and quoting Cooper, described the force that is necessary for the larceny to become a robbery.

> "As to the degree of force used, the court in Cooper said that it was immaterial 'so long as it is sufficient to compel the victim to part with his property. In other words, sufficient force must be used to overcome resistance and the mere force that is required to take possession, when there is no resistance, is not enough, i.e., the force must be more than is needed simply to move the property from its original to another position; there must be more force than is required simply to effect the taking and asportation of the property. Thus, it is not robbery to obtain property from the person of another by a mere trick and without force, or to pick another's pocket without using more force than is necessary to lift the property from the pocket; nor is it robbery to suddenly snatch property from another when there is no resistance and no more force, therefore, than is necessary to the mere act of snatching.' Id."

(Emphasis supplied).

The opposing paradigm for the use of force that will constitute robbery is Raiford v. State, 52 Md. App. 163, 164-70, 447 A.2d 496 (1982), rev'd in part on other grounds, 296 Md. 289, 462 A.2d 1192 (1983). The West opinion, 312 Md. at 205-06, described those circumstances,

> "In Raiford, supra, the victim testified that as she was preparing to enter her car she felt something on her shoulder. Turning around, she saw that the appellant had ripped the shoulder strap bag off of her shoulder. The appellant then fled with the purse. The court held on these facts that the purse snatching was accompanied by sufficient force to constitute robbery. The court reasoned that the necessary resistance to the taking need not emanate entirely from the victim, but can arise also from the attachment of the article stolen to the victim's person or clothing. There, the fact that the victim's shoulder strap was ripped from her arm clearly showed the requisite resistance to the taking."

(Emphasis supplied).

Turning to the facts in the West case itself, the Court of Appeals concluded that there had been no resistance on the part of the victim and, consequently, no force used to overcome any resistance.

> "As in Cooper, the victim here was never placed in fear; she did not resist; she was not injured. The only force applied was that necessary to take the pocketbook from her hand. Unlike the purse in Raiford, no shoulder strap attached Mrs. Guilford's purse to her person. A fair reading of her testimony supports only one conclusion – that she was not aware she had been dispossessed of the purse until she saw the purse snatcher running from her. In view of these facts we can only conclude, as in Cooper, that the evidence was not sufficient to establish all elements of the crime of robbery."

312 Md. at 206-07 (emphasis supplied).

The bottom line is that Bowman v. State and West v. State do not stand for the propositions for which the appellant cites them.

JUDGMENT AFFIRMED; COSTS TO BE PAID BY THE APPELLANT.